

Introduced by Senator Escutia

December 6, 2004

An act to amend Section 311 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 15, as introduced, Escutia. Public Utilities Commission

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory restrictions and constitutional requirements of due process. Existing law requires that certain alternate decisions, as defined, as to any item appearing on the commission's public agenda, be served upon all parties to the proceeding without undue delay and be subject to public review and comment before it may be voted upon. Existing law authorizes the commission to adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than 10 days following service of the alternate decision upon the parties.

This bill would require that the item may not be rescheduled for consideration sooner than 20 days following service of the alternate decision upon the parties.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 311 of the Public Utilities Code is
2 amended to read:

1 311. (a) The commission, each commissioner, the executive
2 director, and the assistant executive directors may administer
3 oaths, certify to all official acts, and issue subpoenas for the
4 attendance of witnesses and the production of papers, waybills,
5 books, accounts, documents, and testimony in any inquiry,
6 investigation, hearing, or proceeding in any part of the state.

7 (b) The administrative law judges may administer oaths,
8 examine witnesses, issue subpoenas, and receive evidence, under
9 rules that the commission adopts.

10 (c) The evidence in any hearing shall be taken by the
11 commissioner or the administrative law judge designated for that
12 purpose. The commissioner or the administrative law judge may
13 receive and exclude evidence offered in the hearing in
14 accordance with the rules of practice and procedure of the
15 commission.

16 (d) Consistent with the procedures contained in Sections
17 1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner
18 or the administrative law judge shall prepare and file an opinion
19 setting forth recommendations, findings, and conclusions. The
20 opinion of the assigned commissioner or the administrative law
21 judge is the proposed decision and a part of the public record in
22 the proceeding. The proposed decision of the assigned
23 commissioner or the administrative law judge shall be filed with
24 the commission and served upon all parties to the action or
25 proceeding without undue delay, not later than 90 days after the
26 matter has been submitted for decision. The commission shall
27 issue its decision not sooner than 30 days following filing and
28 service of the proposed decision by the assigned commissioner or
29 the administrative law judge, except that the 30-day period may
30 be reduced or waived by the commission in an unforeseen
31 emergency situation or upon the stipulation of all parties to the
32 proceeding or as otherwise provided by law. The commission
33 may, in issuing its decision, adopt, modify, or set aside the
34 proposed decision or any part of the decision. Where the
35 modification is of a decision in an adjudicatory hearing it shall be
36 based upon the evidence in the record. Every finding, opinion,
37 and order made in the proposed decision and approved or
38 confirmed by the commission shall, upon that approval or
39 confirmation, be the finding, opinion, and order of the
40 commission.

(e) Any item appearing on the commission's public agenda as an alternate item to a proposed decision or to a decision subject to subdivision (g) shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision "alternate" means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than ~~10~~20 days following service of the alternative item upon all parties. The commission's rules may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

(g) (1) Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, "decision" also includes resolutions, including resolutions on advice letter filings.

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.

(3) This subdivision does not apply to uncontested matters that pertain solely to water corporations, or to orders instituting investigations or rulemakings, categorization resolutions under Sections 1701.1 to 1701.4, inclusive, or orders authorized by law

1 to be considered in executive session. Consistent with regulatory
2 efficiency and the need for adequate prior notice and comment
3 on commission decisions, the commission may adopt rules, after
4 notice and comment, establishing additional categories of
5 decisions subject to waiver or reduction of the time period in this
6 section.

7 (h) Notwithstanding any other provision of law, amendments,
8 revisions, or modifications by the commission of its Rules of
9 Practice and Procedure after January 1, 1999, shall be submitted
10 to the Office of Administrative Law for prior review in
11 accordance with Sections 11349, 11349.3, 11349.4, 11349.5,
12 11349.6, and 11350.3 of, and subdivisions (a) and (b) of Section
13 11349.1 of, the Government Code. If the commission adopts an
14 emergency revision to its Rules of Practice and Procedure based
15 upon a finding that the revision is necessary for the preservation
16 of the public peace, health and safety, or general welfare, this
17 emergency revision shall only be reviewed by the Office of
18 Administrative Law in accordance with subdivisions (b) to (d),
19 inclusive, of Section 11349.6 of the Government Code. The
20 emergency revision shall become effective upon filing with the
21 Secretary of State and shall remain in effect for no more than 120
22 days. A petition for writ of review pursuant to Section 1756 of a
23 commission decision amending, revising, or modifying its Rules
24 of Practice and Procedure shall not be filed until the regulation
25 has been approved by the Office of Administrative Law, the
26 Governor, or a court pursuant to Section 11350.3 of the
27 Government Code. If the period for filing the petition for writ of
28 review would otherwise have already commenced under Section
29 1733 or 1756 at the time of that approval, then the period for
30 filing the petition for writ of review shall continue until 30 days
31 after the date of that approval. Nothing in this subdivision shall
32 require the commission to comply with Article 5 (commencing
33 with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of
34 Title 2 of the Government Code. This subdivision is only
35 intended to provide for the Office of Administrative Law review
36 of procedural commission decisions relating to Commission
37 Rules of Practice and Procedure, and not General Orders,
38 resolutions, or other substantive regulations.

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